



KOSOVO LAW INSTITUTE

EFFICIENCY, ACCOUNTABILITY AND INTEGRITY OF JUDICIAL SYSTEM AND PROSECUTORIAL SYSTEM

Analysis of the implementation of legal obligations by Judicial Council and Prosecutorial Council

(Monitoring report of KJC and KPC for the first six months of 2016)



December 1 2016

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ABOUT KLI

Kosovo Law Institute (KLI), is non-governmental organisation and non-profit of public policy, and specialised ideal in the justice sector.

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ACRONYMS:

ACA	Anti-Corruption Agency
EU	European Union
KLI	Kosovo Law Institute
KPC	Kosovo Law Institute
KJC	Kosovo Judicial Council
BC	Basic Court
BPO	Basic Prosecution Office
SPRK	Special Prosecution of the Republic of Kosovo
AP	Appellate Prosecution Office
ODC	Office of Disciplinary Counsel
MoJ	Ministry of Justice
KBA	Kosovo Bar Association
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
CEPEJ	European Commission for the Efficiency of Justice
AG	Administrative Guidelines

1. EXECUTIVE SUMMARY

Kosovo Judicial Council (KJC) and Kosovo Prosecutorial Council (KPC) continue to face the lack of efficiency, accountability and integrity in the exercise of constitutional and legal responsibilities. Kosovo Law Institute (KLI) while monitoring the Councils, has found that the KJC and KPC during the adoption of secondary legislation deriving from the package of laws on the judiciary have deviated, by adopting rules and decisions contrary to the law and by implementing different practices and standards.

Despite the fact that have passed almost six years since the entry into force of the judiciary package of laws, the Councils have not yet managed to meet the legal obligations for the adoption of secondary legislation. Moreover, the Councils continue to behave with comfort, keeping a relatively small number of meetings with very few substantive points and in most cases, the same issues are continuously repeated. During the process of adopting rules and decisions, there is a lack substantial debate in both Councils. There are member that have never spoken any word during the meetings of the Councils. While in KJC there are discussions by most members for many items, in KPC is noted the lack of democracy and the domination of the discussion by two or three members all the time.

KJC has not managed to adopt the basic regulations for the implementation of legal obligations of the judiciary package of laws. The Council has not yet adopted the Regulation on Publication of Judgments, Regulation on Qualification and Classification of Documents, Regulation on the Supreme Court concerning the Management and Assignment of judges, Regulation on the Court of Appeal concerning the Management and Assignment of judges. Also, KJC even after one year and a half from the entry into force of the legal amendments has failed to achieve to operationalize the Branches of the Basic Courts in Kosovo Polje, Junik and Shtime.

KPC just like KJC has not fulfilled the legal obligations of the judiciary package of laws even after nearly six years from entry into force. KPC has not yet adopted the Regulation on the Secretariat of KPC during the first six months of 2016, Regulation on Qualification and Classification of Documents, Regulation on the Standardization regarding Prosecutors Lecturing, Standard Operating Procedures concerning the Avoidance of Conflict of Interest and the Regulation on the Procedures Governing the Appeals against KPC decisions.

This demonstrates the lack of will to meet legal obligations, which enable efficient and effective functioning of the judicial system and prosecutorial system. Efficiency of Councils in adopting these acts with vital importance for the functioning of the system must be added in order to respond to the needs and requirements for the exercise of its legal responsibilities. Moreover, KLI assesses that failure to adopt some of the basic Regulations, such as Regulation on Qualification and Classification of Documents is being delayed on purpose to create confusion and continuous opportunity to escape from the responsibility to be transparent and accountable to the public.

While monitoring, KLI has found that both Councils have adopted, amended and supplemented several times the same regulations only during this six months period. This is due to lack of proper planning, non-assessment of risk during the drafting of policies and secondary legislation, lack of professional capacities and adjustment of personal interests in these acts.

The term of accountability continues to remain a concern. There are a number of outstanding legal obligations by Courts and Prosecution offices for which there is no demand of accountability from KJC and KPC. Moreover, those Councils are the ones that do not fulfill the legal obligations in this regard, installing so the lack of accountability and impunity culture at all levels of the systems. Neither Court Presidents and nor Chief Prosecutors have reported under the law to the Council. This obligation is not met even by the councils, which should have ensured that such a thing is being implemented. While KJC has approved the Annual Work

Report for Courts and KJC for 2015, KPC did not meet such an obligation. In fact, for the first time in contradiction with the law has changed the practice of adopting the Work Report of the State Prosecutor. The report of SP for 2015 was approved at the Collegium of Chief Prosecutors, while the same one was not sent for review and approval to the KPC, as defined by law.

Mechanisms for performance assessments and discipline for judges and prosecutors, although are built on paper, in practice they are not functioning. Six years have passed since KJC has not made any assessment of judge's performance. KPC has made the performance assessment of only 1/3 of the current prosecutors. While there are constantly complaints about the lack of results and persistent violations of the Code of Ethics and Professional Conduct, the disciplinary measures continue to be missing for judges and prosecutors. The failure to function these two mechanisms in practice proves the persistent criticism about the lack of concrete results and lack of accountability in the justice system.

Councils under the Constitution and the law have an obligation to ensure that judicial and prosecutorial system, are applying the law fairly, impartially and independently. KLI during the monitoring process has found that during the decision-making process, Councils are those who violate laws and regulations adopted by themselves.

Adoption of regulations and decisions contrary to the law and its internal acts of Councils, are seriously violating the legality and legitimacy of the justice system in Kosovo.

The applicable law in Kosovo, has ensured full independence to both Councils in the exercise of their functions and responsibilities. Unfortunately, this independence has been misused by both Councils, by applying the law according to the individual interests of certain persons within the system. KPC since February of this year has a member whose mandate has expired and the same Council has not taken any action to return the legality and legitimacy. On the contrary, hiding after independence the same system they continue to issue other illegal decisions.

This approach affects in the loss of public confidence in the justice system, and seriously violates its integrity by consistently damaging his credibility and image.

Moreover, these practices of Councils, being offenders themselves without fearing the consequences, are the worst message to prosecutors and judges who have the will and courage to exercise their functions with honor and dignity. Such an approach have already installed impunity in daily standard.

2. METHODOLOGY

KLI in order to draft a comprehensive and analytical report, in relation to the implementation of the laws package of judiciary, has used mixed research methodology. In focus of monitoring process were public meetings and activities of the Kosovo Judicial Council (KJC) and Kosovo Prosecutorial Council (KPC). Also, KLI has its monitors at all Courts and Prosecution offices of the Republic of Kosovo, which monitor with a special focus the treatment of corruption cases and other serious criminal cases. Beside this obligation, KLI monitors were also focused on the monitoring process of the implementation of the legal obligations by the key stakeholders in judicial and prosecutorial system, including the supporting staff. The monitoring process was

focused in daily basis with regard to the performance of the courts and prosecution offices in implementation of the laws, policies and action plans approved by KJC and KPC. The findings by the monitoring process are gathered at the KLI central office in Pristina, where the legal experts of the Institute, analyze such data and information, develop the legal and practical research from the data's received from the field. Such research methodology provides practical possibility to identify problems and analyze all the matters which have an interest in serving the implementation of law.

After the identification and analyzing of the findings and the problematic issues against the law, international practices and standards, KLI has conducted in-depth interviews with all key stakeholders, starting from those who are competent in making policies and laws for justice institutions and implementers of these policies and laws.

Interviews are conducted based on the indicators which are as a result of the monitoring process, findings and assessments made by legal experts at KLI, which served to conclude the practical problems in the area of the primary and secondary legislation as well as in their implementation in practice. Conducted interviews are codified in that manner that issues raised and information received were included into report.

Also, to be more accurate in identifying problems and proposing recommendations for solutions to problems in the right implementation of the law and the proper functioning of the KJC and KPC, KLI has analyzed the legal basis and relevant local and international documents, which are related to the independence and functioning of the Judicial and Prosecutorial Councils.

3. ADOPTION OF SECONDARY LEGISLATION IN KOSOVO JUDICIAL COUNCIL

3.1. Regulation no. 05/2016 on Recruitment, Examination, Appointment and Re-appointment of Judges

On July 15, 2015, entered into force the Law 05/L-033 on amending and supplementing the Law no. 03/L-223 on Kosovo Judicial Council. Amendments of the law on KJC have incorporated new responsibilities for the Council in particular as regards the **regulation and organization of examinations for judges, as well as their evaluation during the initial mandate.**

At the same time, amendments to the Law on Courts, have changed the conditions and requirements for candidates and newly appointed judges, by impacting in the initial and final stages of the selection. Meanwhile during the previous system was required for candidates who were running for the post of judges to be selected for the so-called ILEP¹ managed by KJI (and, only after the training, to be interviewed and nominated for appointment by the Council), based on the new legal amendments, candidates now will have the exam which is completely managed by the KJC and KPC and with its conclusion, if they result to be successful, they will be immediately proposed for appointment. Only after the appointment, new judges and prosecutors will participate in the initial training which lasts 12 months. Therefore, the reform is affecting the entire selection process, increasing the role of Councils, which currently are the only authorities responsible for recruiting and proposing candidates for appointment as judges as well as prosecutors. This is in line with European and International Standards and with the recommendations of the relevant project, which supported KJC.

As a result, on April 6, 2016, KJC adopted the **Regulation no. 05/2016 on Recruitment, examination, appointment and re-appointment of judges** (hereinafter referred to as "Regulation ") which defines the rules of the procedure for recruitment, appointment and re-appointment of judges. Adoption of this regulation was a legal obligation foreseen in Article 17 of the Law on amending and supplementing the Law on KJC.

KJC on December 8, 2016, has held the 168 meeting, during which were taken many decisions. At this meeting KJC has decided to approve the Regulation No. 17/2016 on amending the Regulation No. 14/2016, for amending and supplementing Regulation no. 09/2016 on the Selection Procedures, Appointment, Evaluation, Suspension and Dismissal of Court Presidents and Supervising Judges.

KJC through this regulation has eliminated the obligation set with Article 4, paragraph 3 of the Regulation no. 14/2016 for the Amendment and Supplementation of Regulation 09/2016 on the Selection Procedures, Appointment, Evaluation, Suspension and Dismissal of Court Presidents and Supervising Judges.

Respectively, according to this decision, members of the Evaluation Committee besides that are allowed to participate in the meeting of the KJC when deciding on the appointment of the Court Presidents or Supervising Judges, but the same ones have also the right to vote.

Meanwhile, with the Regulation No. 14/2016, adopted on November 1, 2016, members of the Evaluation Committee had only the right to participate in the meeting of Council on the appointment of the Court Presidents or Supervising Judges, without the right to vote.

Despite the fact that KJC has taken this decision in order to ensure the quorum to decide on the appointment of the Court Presidents or Supervising Judges, KLI assesses that practices build by

1 ILEP – Preparatory Exam for Judges.

KJC for meeting and changing the rules and procedures several times during the selection process have an impact on the loss of public confidence, citizens and candidates for these positions associated with a fair, impartial, independent and professional process.

KJC before the adoption of its regulations and internal acts should have a more serious approach on planning and assessing the risk during the decision making process.

KJC has already made practice the amending and supplementing the rules and procedures regarding the important processes in the judicial system. KJC the same approach had applied during the appointment process of new judges.

The Assembly of the Republic of Kosovo in May 2015 has approved the amending and supplementing of judiciary's package of laws, in order to harmonize the legal provisions between these laws relating to the process of appointment, reappointment, transfer, discipline and dismissal of judges and prosecutors and other provisions. Harmonization of the provisions of these laws was scheduled as a criterion to be met by Kosovo regarding visa liberalization process and the Stabilisation and Association Agreement between Kosovo and the European Union.

Despite the fact that Kosovo failed to meet this requirement by adopting a package of laws, in practice during the adoption of acts and internal policies, Kosovo Judicial and Prosecutorial Council is diverting this path, by applying different practices and standards regarding the same processes. While KPC has determined that members of the KPC that are part of the evaluation committee for Chief Prosecutors, can not participate in the voting in the Council on this process, KJC has applied different standard allowing members of the Evaluation Committee for Court President's to have the voting right in the KJC.

3.1.1. The delay in issuing the Regulation no. 05/2016 and its frequent amending and supplementing

KLI while monitoring the work of the KJC, has found that it took more than nine (9) months to KJC to issue the Regulation no. 05/2016 on Recruitment, examination, appointment and re-appointment of judges, while according to the law, was obliged to adopt it within six (6) months.

According to Law no. 05/L-033 on amending and supplementing the Law no. 03/L-223 on Kosovo Judicial Council, KJC was obliged that within six (6) months from the entry into force of the law, to issue all Regulations set by law. This obligation derives from Article 17 of the aforementioned law which reads, as follows

“Regulations set forth in this law, shall be issued within six (6) months, after the entry into force of this law”.

Despite this, KLI has found that there was delay in issuing bylaws in general and of this Regulation in particular. According to the legal deadline, this Regulation should be adopted by KJC until **December 15, 2015**, while it was approved on April 6, 2016, nine (9) months from the

entry into force of the law, and four (4) months after the foreseen deadline in Article 17, as quoted above.

KLI notes that KJC has failed to pay special attention to this issue, even though it was very urgent, given that for the first time KJC was authorized to conduct the recruitment process of judges without the help of KJI. Meanwhile previously this issue was exercised by KJI through ILEP's program, with changes made to the law on KJC, the process has exclusively passed in the hands of the KJC. It is clear that new changes require an additional commitment of the KJC, to exercise these new responsibilities. Therefore, it was expected from KJC to issue within the legal deadline each bylaw important for the recruitment process.

3.1.2. Supplementing of the Regulation within a short period from the adoption

KLI notes that the ability of KJC in making clear and transparent policies, through bylaws, is not yet well consolidated. This is because KJC has supplemented and amended the regulation, two (2) times within a very short period. Exactly, on May 11, 2016 and August 16, 2016, were adopted the Regulation (without number) and Regulation number 12/2016, which amend and supplement the Regulation 05/2016 on Recruitment, examination, appointment and re-appointment of judges. Moreover that the changes were made while the announcement of vacancies was still open. This shows that the policy-making by KJC is quite fragile and therefore may cause confusion, raising doubts on the credibility of the entire process of recruitment and appointment of judges. Moreover, the appendices of the Regulation are not published on the website of KJC, therefore it is not clear whether appendices have had any supplement or amendment.

3.1.3. Legal basis for issuing the regulation and legal terminology used

KLI notes that the issuance of the **Regulation no. 05/2016 on Recruitment, examination, appointment and re-appointment of judges** is based on several constitutional and legal provisions. In fact, are quoted articles of the Constitution and the law, which do not regulate at all the issue of organizing the exam for candidates for judges and do not give legislative authority to KJC, as follows:

- The regulation was issued under Articles 103 and 104 of the Constitution of the Republic of Kosovo (hereinafter - the Constitution). KLI noted that these two articles of the Constitution do not refer at all to the issue of organizing the exam, neither the recruitment process for judges. Article 103 of the Constitution stipulates the basic rules of Organization and Jurisdiction of Courts, while Article 104 talks about the process of appointment of judges by the President of Kosovo. Also, KJC should be very careful in the use of legal **terminology** defined in the Constitution. According to Article 104, paragraph 1, of the Constitution, the KJC has the authority to propose candidates for appointment to the President, and the President is the constitutional authority who appoints the judges. As a result, KLI considers that the term " Appointment " in the

Regulation should be amended and replaced with the term " Proposal 'or' Proposal for Appointment '.

- Further, the regulation was issued under Article 105 of the Constitution. Article 105 defines the authority of the KJC, regarding the development of the Re-appointment of Judges process. In fact, the Re-appointment is a special process developed by the KJC, after the expiration of the initial mandate, three (3) years, by the judge. So, KJC have to design the re-appointment process through another bylaw and not in this Regulation. Proposal for Appointment process should be separated from the process of Re-appointment Proposal, because both processes are different regarding the form and content. Even in this case, as regards the terminology used, the Re-Appointment term should be replaced with the 'Proposal for Re-appointment' term.
- Beside this, the Regulation was issued under Article 108 of the Constitution. KLI notes that Article 108 of the Constitution stipulates the authority of KJC for managing the judicial system, by making clear the principle of powers separation. However, this Article does not foresee a legislative authority for KJC. **The right of KJC to issue bylaws, does not come from the Constitution, but by law**, specifically Article 4 of the Law on KJC.

As stated above, KLI recommends to KJC that upon issuance of bylaws, is enough to refer only the legal basis and only in those cases when the by law was passed such authority and nit is not necessary to refer to the Constitutional provisions.²

3.1.4. The structure and content of the regulation no. 05/2016

The Regulation of KJC on Recruitment, Examination, Appointment and Re-appointment, provides provisions that regulate three (3) important processes for the KJC, as follows:

- a) The process of examination for candidates for judges;
- b) The proposal for the appointment process; and
- c) The proposal for the re-appointment process.

KLI considers that it is not clear the reason why the three processes are involved in one regulation, when it is known that they differ from the legal basis, evaluation criteria and procedure development. However, in this context, it is important to be emphasized that the regulation contains a clear and detailed description for the **examination process**. More specifically, the examination process is designed to be implemented in three phases: *The Qualification Test, The Written Test and The Interview*. As a result, although the regulation does not specify, it means that the points obtained by the three stages, give the final result in the recruitment process. At this point, the process of examination and recruitment process seems to

² For example, a brief overview of some Regulations issued by the Ministry of Justice, has shown that the regulations had as reference the legal provisions and not these constitutional ones.

have been unified or confused or are not clear enough, because the examination enters into the category of the general conditions to be met by a candidate, and recruitment means the entire process developed for the purpose of selection of candidates for the proposal for appointment or proposal for re-appointment.

Also, there are no clear and sufficient provisions regarding **the nomination process for appointment** and re-appointment by the Council. The proposal for appointment issue is arranged with only one Article (Article 31) of the Regulation. In particular, the regulation does not contain any provisions on how will be proceeded the recruitment proposals of the committee to the Council and does not clarify the role of the Council in the proposal process for appointment. Based on the current provisions of the Regulation, it is created the impression that any proposal which comes by the committee automatically passes to the Council. Moreover, it is not clear how the communication between the committee for recruitment and the Council takes place, during this process or in case of eventual disagreements. On the other hand, the Law on KJC, in Article 17, paragraph 4³, has foreseen eight (8) important criteria, on the basis of which the Council proposes a candidate for appointment, but the regulation does not refer to these criteria. As a result, it is not defined or explained the fact that who is the authority which will implement these criteria, the Recruitment Committee or the Council. Then, it not specified in the regulation if the Council will have at its disposal all candidate files or will have only the list with the names proposed by the Recruitment Committee. Also, it is not foreseen how the Council will act, against a negative opinion of a certain Court, for a particular candidate, according to Article 17 paragraph 3 of the Law on KJC. Especially this issue is not regulated at all, because the opinion of a certain Court regarding a candidate and the opportunity or not of a candidate to respond to that opinion, should be part of the process, especially when the Council decides about the issue.

Therefore, the issues discussed above require KJC's attention and an urgent addressing in order for the process to be transparent, objective and reliable, not only for the participants in this process but also for the public.

On the other hand, **the re-appointment process** is not described at all and it refers more to the law and other bylaws of KJC. KLI considers that if the re-appointment process is provided in any other bylaw, approved by KJC, then this issue should not be treated at all in this Regulation. On the contrary, the regulation must be supplemented and include provisions that regulate the process of re-appointment, regarding the assessment of judges during the training process, the assessment of a judge after the training process, the criteria on which will be performed this

3 Law no. 03-L/223 on Kosovo Judicial Council, Article 17 paragraph 4:4.1 professional knowledge, work experience and performance, including an understanding of, and respect for human rights; 4.2. capacity for legal reasoning as proven through professional activities in the legal field, including as a judge, prosecutor or lawyer, academic work and other professional activities; 4.3.professional ability based on previous career results, including participation in organized forms of training in which performance has been assessed; 4.4.capability and capacity for analyzing legal problems; 4.5.ability to perform impartially, conscientiously, diligently, decisively and responsibly the duties of the office; 4.6.communication abilities; 4.7.conduct out of office; and 4.8.personal integrity.

assessment, who will do the assessment – the permanent evaluation committee or any temporary committee, the rights of judge in assessment, etc. So, it should be designed a special and complete process, for the proposal process for re-appointment.

KLI considers that at the time of appointment, all judges have equal status regardless of whether they are judges in training or serving judges, therefore the assessment of their performance, for the purpose of the **re-appointment process** should be made by the same performance assessment committee. In this case, only the criteria may vary, in order for that the assessment to be objective and based on exercised duty or participation in the training.

And finally, it is very important for KJC to design a clear policy on the role of KJI in assessing the performance of the judge, during the training. In this regard, cooperation and clear communication between the KJC and KJI, will be vital for an objective and transparent evaluation process, since for 12 months from the time of appointment, the main activity of the judge will be the training.

A very important issue but also sensitive is the selection and **appointment of judges of non-majority communities**. Regulation does not address this issue even though the Law on KJC clearly stipulates that the Council should take measures to increase the number of representatives of non-majority communities⁴.

3.1.5. Frequent amending and supplementing of the Regulation

Exactly, on May 11, 2016 and August 16, 2016, were adopted the Regulation (without number) and Regulation number 12/2016, which amend and supplement the Regulation 05/2016 on Recruitment, examination, appointment and re-appointment of judges

Moreover that the changes were made while the announcement of vacancies was still open. This shows that the policy-making by KJC is quite fragile and therefore may cause confusion, raising doubts on the credibility of the entire process of recruitment and appointment of judges.

KJC on March 16, 2016, had announced a competition for fourteen (14) positions for judges, of which 12 positions for judges of Basic Courts in the Republic of Kosovo. Recruitment Committee on October 15, 2016, had organized the qualification test for candidates for judge. KLI while monitoring KJC, has noted that the adoption and amendments of regulations are made before the announcement of the contest for judges, as well as during the time when the announcement for vacant positions was still open, including changing the rules after the organization of qualifying exam for candidates for judges.

And in the end, KJC with the decision dated on October 28, 2016, has once again changed the same regulation, through which has reduced the passing threshold of candidates to the qualifying test in 40 points from 45 as was previously determined by regulation. The amendment and

⁴ See Article 17 paragraph 1 of the Law on KJC.

supplement of KJC regulations, regarding the process of recruitment, examination, appointment and re-appointment of judges, changing the criteria and procedures during the flow of the recruitment process and especially during the path when the qualification test was held, fades the reliability of the public and candidates who have applied for the judge position.

Amending rules and reducing criteria during the process puts in an unequal position all candidates who have passed the threshold before changing the criteria. Moreover, the reduction of criteria puts in risk the entire process of appointment of judges, since if KJC during the completion of the appointment process of judges will propose for appointment a candidate for judge from the ranks of those who have not passed the test held on October 15, 2016, respectively, that had less than 40 points, will discriminate and restrict the rights of other candidates which have proved to be more successful and who have passed the threshold of 45 points.

Decision dated on October 28, 2016, falls also in contradiction with the purpose and the scope itself for which the regulation was adopted. According to this regulation, all candidate for judges stick to its provisions during the recruitment process, KJC, members of the Committee established by this Regulation, as well as the staff of the KJC who are involved in implementing the regulation. Practices and international standards that define the minimum criteria of the appointment of judges process, determine the "all decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merit criteria, considering the definition of qualifications, integrity, opportunities and efficiency.

Moreover Opinion No. 1 of the Consultative Council of European Judges recommends that the responsible authorities of the competent member states to determine and advise on the appointment and promotion of judges should introduce, publish and give effect to objective criteria, in order to ensure that the selection and career of judges to be based on merit, taking into account the qualifications, integrity, opportunity and efficiency. Moreover it is essential for judges to have the sense for justice and the sense for impartiality. However, in practice, it is difficult to assess this criterion, so transparent procedures and coherent practices should be sought during their application. In this regard, KLI assesses that such practices built by KJC related to the changing of rules, criteria and procedures during the process of appointment of judges falls in contradiction with the applicable law in Kosovo, as well as with international standards and practices.

3.2. Regulation no. 01/2016 on the Organization and Functioning of ODC

On January 20, 2016, at the common meeting of KJC and KPC, was adopted the Regulation No. 01/2016, on the Organization and Functioning of ODC, (hereinafter "Regulation "). The issue of labor organization and functioning of the ODC has been one of the most discussed issues, as well as by local factor also the international one. Until the adoption of this Regulation, ODC was working according to an internal document called 'Manual for rules of procedure and

commentary' which regulated the work of the Judicial Inspection Unit during the administration of judiciary by UNMIK. By adopting this regulation, KJC and KPC made an important step towards strengthening the ODC, because for the first time were settled the legal contours for the organization and functioning of this independent body, but in the service of both Councils.⁵

However, it is important to be emphasized that in various reports of local and international experts⁶, was repeatedly raised the need for the organization and work of ODC to be regulated by a special Law and not with bylaws. This issue is already being addressed by the Ministry of Justice. Being competent authority for legislative initiatives in the field of justice, the Ministry has established a working group for drafting the Law on ODC. However, until the issuance of the new law for ODC, the adoption of this regulation, by both Councils, it is an important step for the organization and functioning of ODC as one of the most important bodies of KJC and KPC.

3.2.1. Unaddressed issues on the Regulation on the Organization and Functioning of ODC

As can be understood from the name of the regulation, its adoption intended the organization and functioning of the ODC work. However, it is regrettable that the regulation does not address any of the main functions of daily work of ODC. The regulation does not address and does not regulate the main activities of ODC, such as: the handling of complaints, rejecting the complaints, complaints based on the initiation of investigations and complaints which require more information, the purpose of judicial investigation; planning, preparation and organization of the investigation; investigation strategy; special circumstances - investigation on criminal activities ongoing by the subject under investigation; closure of investigations; archiving files, etc. All these and many other issues missing for the work of ODC and legal framework, have been addressed in many reports of international organizations, and recently also by the EU Project supported by KJC and KPC, published in March 2016.

Therefore, based on what was said above, KLI considers that the regulation does not fulfill the mission for which it was approved and as such can be difficult to be applied.

3.3. Regulation on Appointment of Court Presidents

On May 25, 2016, KJC adopted the Regulation no. 09/2016 on the Selection Procedures, Appointment, Evaluation, Suspension and Dismissal of Court Presidents and Supervising Judges (ongoing "Regulation"), which entered into force the day it was adopted and signed by the Council

⁵ See Article 43 of the Law on KJC.

⁶ See the Project Report of EU for KJC and KPC. March 2016.

Through this bylaw, KJC for the first time, has made efforts to establish a system of selection and appointment of court presidents, in the judicial system in Kosovo. Until the adoption of this regulation, this sector of justice administration, was challenged by the lack of procedural rules.

However, KLI has assessed this regulation in certain aspects of material and procedural norms. The first issue that strikes the eye is the name of the Regulation. According to Article 2, paragraph 3 of the Law on amending and supplementing the Law on KJC⁷, the Council is responsible for: “*issuing the regulation for the selection procedure of the President of Supreme Court and the Court Presidents*”. As can be noted, the law authorizes only the Council to adopt the regulation only for the selection process and only for court presidents. Contrary to this, KJC in the absence of legal authorizations expands the scope of this regulation on the "**appointment, evaluation, suspension and dismissal**" not only for the court presidents, but also for another category of court managers, such as supervising judges.

Also, designation of the regulation is in contradiction with Article 22 of the Basic Law of KJC for this article speaks only of the appointment process of court presidents and supervising judges, but nowhere defines the issue of assessment or dismissal. In fact, the dismissal of court presidents and supervising judges, is defined in Article 23 of the Basic Law on KJC, which is not part of the regulation, and the assessment issue of the court presidents work, is not defined by law.

3.3.1. The structure of the Regulation on Court Presidents Appointment

KLI has noted that the structure of the regulation is unclear because there is a mixture of the material provisions with the procedural provisions. While in the legislative techniques of drafting is always recommended that during the process of legislative drafting to be treated separately the material provisions with those procedural, in order to be clear to the reader and easily applicable in practice.

Moreover, the regulation contains material and procedural provisions which treat in the same way the process of appointment, evaluation and dismissal, as for the highest Court President in the country as the one of the Supreme Court, as well as the presidents of other courts. KLI considers that the weight and importance of the process for the appointment, evaluation or dismissal of the Supreme Court President, is very large and has an impact on the entire judicial system, therefore, the criteria must be such as to suit this position. Indeed, the Constitution and the Law on KJC, has made the difference between these two categories in the appointment process because it has determined that the Supreme Court President is appointed by the President of the State, and for presidents at other courts, the responsibility of appointment is left in the competence of the Council. Therefore, KLI recommends for KJC to carefully treat the issue of selection, evaluation and dismissal of the Supreme Court President, in relation to the court

⁷ Law No. 05-L-033 on amending and supplementing the Law No. 03-L-223 on Kosovo Judicial Council, into force from July 15, 2015.

presidents of lower level, as for the terms of criteria as well as the procedure that must be followed.

3.3.2. Legal Remedies in disposition

Constitution of the Republic of Kosovo, through Article **32**, **has guaranteed to each citizen/person the right to pursue legal remedies** against judicial and administrative decisions which infringe on his/her rights or interests.

KLI has found that the Regulation had not foreseen legal remedy available to candidates, in case of appointment or dismissal. This lack of the legal remedy leaves the candidates without legal protection, by not guaranteeing them for eventual claims to be reviewed by a second instance body. Therefore, KLI recommends for KJC to review its position towards the right of each candidate in the procedure, in the use of a legal remedy, guaranteed by the constitution and law.

4. ACCOUNTABILITY IN THE JUDICIAL SYSTEM AND CONTROL MECHANISMS

KLI during the monitoring process of KJC’s work, has found that KJC has approved the annual work report of the courts and approved the annual work report of the KJC for 2015. However, KJC has not yet managed to start assessing the performance of judges which in practice directly affects the lack of accountability and efficiency of the work of courts.

KJC during this period has never invited the Court Presidents to report regarding their management and administration in practice. Lack of control and supervision, in practice, are contributing also have a lack of accountability in the judicial system, lac of efficiency and responsibility, which are affecting the installation of impunity in practice, as elaborated in the table below.

Moreover, despite the fact that by law, KJC has been obliged to establish new branches of courts in Kosovo Polje for the municipality of Kosovo Polje and Municipality of Obilic, branch in Junik for the Municipality of Junik; branch in Shtime for the Municipality of Shtime, such an obligation has not been fulfilled yet.

Legal obligations of judicial system	Fulfilled	Unfulfilled
Annual Work Report of Courts	X	
Annual Work Report of KJC	X	
Judges Performance Assessment		X
Court Presidents reporting to KJC		X
Recruitment of new Judges		X

Establishment of branches of the Court in Kosovo Polje for the Municipality of Kosovo Polje and Municipality of Obilic; branch in Junik for the Municipality of Junik; and branch in Shtime for the Municipality of Shtimes		X
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Table 1 – Fulfillment of the legal obligations of judicial system

KLI ongoing has analyzed the implementation of legal obligations based on indicators set in accordance with the legal liabilities of judicial system.

4.1. Annual Work Report of KJC for 2015

Based on Article 4, paragraph 1:26 of the Law no. 03 / L-223, KJC on January 20, 2016, adopted the annual work report of the Council for 2015. The annual report on the work of KJC is one of the most important documents, because besides that reflects the one year work of the Council and Courts, at the same time makes it transparent. In this way, the Council not only meets a constitutional and legal obligation, but also informs the public about the work and activities carried out with the aim of strengthening the judicial system in the country.

KLI assesses that the annual report for 2015, is unclear and insufficient because it does not contain sufficient information on the activities conducted by the Council, even more since the data presented are more superficial-statistical rather than substantive . Therefore, it is expected for the content of the report to have been more complete, as from the structure as well as from the content.

In this report it is more reflected the work of Councils committees, while many aspects of the work of the Council itself have remained un-reflected. In the part of the report where is presented the work of the Council is emphasized that 36 meetings were held and 327 decisions were issued. However, apart from these statistical data it does not explain anything more regarding what decisions are issued and how those decisions have affected to improve the daily functioning of judicial system. Moreover, it is evident the lack of an analysis of the council’s work for 2015, especially on issues, such as:

- What were the challenges of the system during the reporting year and how were they treated by the Council? It is noted the lack of an overall analysis regarding the factors and indicators that had an impact (positive / negative) on the work of the Council during 2015.
- What were the limitations (eg. the budget) and what was their effect on work of the Council?
- How did they overcome the obstacles and what is intended in the future in order for them to not be repeated?
- What were the main results and achievements?

During the reading of the report it is created the impression that Decentralization has been the main activity of the Council for the reporting year and does not include the fact that during the reporting year the Council, inter alia had developed a process of promotion for judges at the Court of Appeal, had held and supervised the selection process of a council's member, had held the nomination process for the re-appointment of a number of judges with the initial mandate, etc. These and other activities that the Council has conducted during 2015, are not presented in the report and therefore are not made transparent to the public.

Moreover, the report does not provide sufficient information concerning the challenges raised by local and international organizations about the judicial system with particular focus on, under a) insufficient number of judges, b) large number of cases that have reached the statutory limitation, c) ineffective and inefficient treatment of corruption cases and organized crime etc.

Further, a number of legal authorizations listed below are not reflected in the report, which gives the impression that the Council has not exercised the authority in a full manner, as follows:

- According to Article 49 of the Law on KJC, the director of the Office of Disciplinary Counsel (ODC) is obliged to report to the Council on the work of ODC. However, the report does not present any information if such reporting occurred. Lack of coverage of this activity in the report creates the impression that the Council did not meet this legal obligation. Moreover, regarding the disciplinary issues the Council under Article 39 of the Law on KJC, it acts as the second instance and for this activity of the council, the report does not provide data.
- According to Article 26 of the Law on KJC, the Council established the Assembly of Court Presidents and Supervising Judges, as the advisory body of the Council. However, the report does not provide any information about the work and activities of this body.
- - Once a year, court presidents are invited by the Council to report for the respective court. However, in the report is not presented this activity.

The report presents the activities of the Judicial Performance Review Unit and are listed a number of reports that this Unit has sent to the Council for review and approval. However, the report does not reflect the activity of the council on these reports.

4.2. Annual Work Report of Courts for 2015

The Secretariat of the Judicial Council during 2016, has published the Statistical Report of Courts for 2015⁸, which report reflects the work of the courts in Kosovo, in addition to the Basic Court in Mitrovica, branch in Leposavic and Zupin Potok, due to their non-functioning.

The report published presents cases according to the types in each respective court, and a superficial analysis regarding the workload of judges with cases, including the efficiency of judges in solving cases of serious and light cases, as well as the average with cases charged at national level.

According to the report published by KJC Secretariat, it appears that the Basic Courts and their branches in all criminal, civil, administrative cases and economic ones have had 278 judges in all country and 1333 supportive personnel, during 2015.

All Basic Courts in Kosovo had at work during 2015, 791.760 cases of all natures, of them have inherited from previous years 403.022 cases, but only in 2015, the courts have received at work 382 641 new cases. Basic Courts during 2015, have resolved a total of 382.752 cases, and 409.008 cases have remained unresolved.

The report shows that on average a Basic Court judge is charged with 21 cases per month, while judge on average have resolved 29.1 cases per month, respectively 138 percent of the rate.

The report published by the Secretariat of the Judicial Council is public and all interested parties can have an access in it.

1.1. Judges performance assessment and disciplinary measures

Applicable law governing the establishment of control and accountability in the judicial system for judges has provided the mechanism of performance evaluation for judges and the mechanism for disciplining judges in cases where the same act against the code of ethics and professional conduct for judges.

Article 11 of the Law on amendment and supplement of the Law on Kosovo Judicial Council, has set the establishment of the Judges Performance Assessment Committee. This committee is responsible for evaluating the performance of judges, which consists of experienced judges in the Kosovo judicial system.

⁸ Statistical Report of Courts –Annual for 2015. (See link: <http://www.gjyqesori-rks.org/en/kjc/report/list/1>). (Last accessed on December 15, 2016).

KJC on August 30, 2016 has approved the Regulation No. 11/2016 on judges performance assessment. This regulation sets out the procedures and criteria for assessing the performance of judges at all levels in Kosovo.

KJC also on October 6, 2016, had established the Judges Performance Assessment Committee, which consists of 14 judges from all court levels.

Despite its legal obligation, KJC in 2016, did not conduct the performance assessment for any judge⁹.

Regarding the disciplinary procedures for judges during the first six months of 2016, the Disciplinary Committee of KJC has received 7 final reports by the Office of Disciplinary Counsel¹⁰.

During the first six months period of 2016, the Disciplinary Committee of KJC and KJC, has imposed the following disciplinary measures against:

- 5 decisions – the disciplinary proceeding is terminated due to the reach of statutory limitation of the claim of committing misconduct;
- 1 decision - Proposal for the Kosovo Judicial Council to recommend to the President of the Republic of Kosovo, the removal (dismissal) of a judge;
- 1 decision - Reprimand;
- 3 decisions - Release from disciplinary responsibility; and
- 1 decision - Temporary Suspension.

KLI monitors judicial and prosecutorial system for several years now and in the frame of the monitoring process is constantly addressed the performance of the Office of Disciplinary Counsel. This office was never really supported for the role that had to increase the accountability of judges and prosecutors. However, even within the work that has performed consistently had complaints regarding the implementation of selective justice. Moreover the reports between this office and judges and prosecutors have been peeved that there were also initiation of cases for abusing of duty by ODC.

All these developments have naturally somehow compromised in public the function of the office and the need is to be totally reviewed the way of its functioning. So far has not proven

9 KLI interview through electronic mail with Mr. Astrit Hoti, Director if the Legal Department of the Secretariat of KJC. October 17, 2016.

10 KLI interview through electronic mail with Mr. Astrit Hoti, Director if the Legal Department of the Secretariat of KJC. October 17, 2016.

efficiency and effectiveness, thus it has had an impact of having a lack of accountability. Now in the process of drafting the draft law on the ODC and we as KLI have required to be analyzed the modalities of the functioning of this office. Right now we believe that this office should not remain within the KJC and KPC, because this form has proven in practical way and has created the perception among the public that it is not independent. ODC should be an independent institution in exercising its responsibilities, and its director should only be manager and nothing more. It should be noted the possibility for ODC to be placed in the Ministry of Justice or as an Independent Agency in the Assembly of Kosovo, but can not remain in Councils, because it has not proven to be functional. However, wherever it'll take place it should be independent in the exercise of its functions in order to enable the increasing of accountability in the justice system. As, five years after the entry into force of the law and the obligation of KJC, to assess the performance of judges, in practice the Judges Performance Assessment Committee did not meet such an obligation.

Failure of performance and disciplinary mechanisms to provide almost full amnesty to judges for any failure or breach of the Code of Ethics and Professional Conduct. The failure of these mechanisms to function, strengths the accountability institute in paper, meanwhile in practice it does not exist at all.

1.2. Court Presidents reporting to Kosovo Judicial Council

Based on the Law on Kosovo Judicial Council, the Basic Court Presidents on annual basis send to the Council a report on the success of the implementation of previous annual plan for case management. Also by law, the President of the Basic Court shall send to the Council a written quarterly report that addresses the court's work, identifying any problems which the court is facing, and proposes remedial steps to address such problems.

While KJC during the first six months has approved the first quarterly report for 2016- on the work of the courts, which report is also accessible on the official website of the KJC.

Also, KJC has adopted and published the semiannual report for 2016. This report reflects the work of the courts for each court and branch separately and for each court level.

Basic Court Presidents and the President of the Court of Appeal in Pristina did not report and protected to the Council regarding the abovementioned reports.

1.3. Kosovo Judicial Council meetings

KJC from January 1, 2016 until June 30, 2016 held a total of 10 meetings, which generally falls approximately two meetings per month. KJC has held an extraordinary meeting on April 19, 2016, in which it approved the resignation of the member of the KJC, Dragan Veljkovic, who was involved in party activities, which by the legislation in force is not allowed.

1.3.1. Discussions of KJC members during the adoption of policies and publication of decisions

KLI has monitored in details all the meetings of KJC, including participation in the discussion by all members of the Council. Findings show that even in KJC there are certain members who never participated in the discussion on issues with interest for the judicial system. Unlike KPC, KJC has much larger involvement of members in discussion and decision making. However, KLI finds that there is no substantive and professional debate to contribute to increase the quality in policy making and decision making in accordance with law, European standards and practices. During this period KJC has issued 72 decisions, the vote of which in many cases is taken unanimously, however there are many cases in which the voting of members is different, showing democracy elements of the Council. Given that the KJC during the first six months of 2016, has changed his composition and is re-refreshed with new members, participation in discussions of KJC is elaborated in two tables, as are presented below:

Monitoring the discussions of KJC members at the Council's meetings – Old composition of Council's members - (01.01.2016 - 30.06.2016)						
KJC members	Kosovo Judicial Council meetings					
	13.01.2016	02.02.2016	10.02.2016	02.03.2016	08.03.2016	Total
Enver Peci	5 min, 55 sec	14 min	4 min	9 min	10 min	42 min, 55 sec
Agim Maliqi	20 min, 33 sec	7 min	2 min	11 min	Passive	40 min
Armend Berisha	Passive	2 min	Passive	5 min	Passive	7 min
Asllan Krasniqi	Passive	1 min, 30 sec	Passive	Passive	Passive	1 min, 30 sec
Gjimshit Galushi	Passive	Passive	Passive	45 min	Passive	45 sec
Makifete Saliuka	15 sec	1 min	9 min	5 min	Passive	15 min, 30 sec
Sali Mekaj	Absent	Absent	Absent	Absent	Absent	Absent
Valdete Daka	8 min, 47 sec	6 min	6 min	22 min	Passive	42 min, 47 sec
Nehat Idrizi	1 min, 26 sec	30 sec	10 min	1 min	12 min	15 min
Nebojsa Boricic	3 min, 12 sec	7 min	Passive	6 min	Passive	16 min, 12 sec
Raima Elezi	1 min	1 min	Passive	1 min	Passive	3 min

**Table 2 – Monitoring the discussions of KJC members ta the Council's meetings
Old composition of Council's members - (01.01.2016 - 30.06.2016)**

Monitoring the discussions of KJC members at the Council's meetings – New composition of Council's member- (01.01.2016 - 30.06.2016)				
KJC members	Kosovo Judicial Council meetings			
	16.03.2016	06.04.2016	25.05.2016	Total:
Nehat Idrizi (February 2016)	26 min	16 min	9 min	51 min
Nenad Lazic	6 min	Passive	Passive	6 min
Makifete Saliuka	8 min	9 min	5 min	22 min
Armend Berisha	2 min	5 min	1 min	8 min
Asllan Krasniqi	7 min	2 min	2 min	9 min
Gjimshit Galushi	Passive	Passive	Passive	Passive
Muhamet Rexha (March 2016)	Passive	5 min	3 min	8 min
Nebojsa Boricic	Passive	1 min	1 min	2 min
Raima Elezi	Passive	Passive	Passive	Passive
Anita Prenaj	Passive	1 min	Passive	1 min
Agim Maliqi	Passive	38 min	13 min	51 min

**Table 3 - Monitoring the discussions of KJC members ta the Council's meetings
New composition of Council's members - (01.01.2016 - 30.06.2016)**

Following are presented all meetings, in which are included the decision that were taken and discussions of KJC members.

- KJC the first meeting in 2016, has held on January 13, 2016 or its 145th meeting.** In this meeting participated ten members of the KJC, discussing the agenda items related to the Administrative Guideline for amending the Administrative Guideline (03/2015) for the determination of representation expenses, the memorandum of understanding between the KJC and KPC, announcement of the positions for KJC members from among the judges of the Supreme Court and request to fulfillment of the provisions of Article 2 of Administrative Guideline no.03 / 2015.

During this meeting KJC has approved the resignation of the judge Mr. Florent Latifaj, the temporary transfer of the judge Mr. Artan Serjani in the Basic Court in Gjakova, the appointment of EULEX judge Mr. Piero Leanza, and it has adopted the Administrative Guideline for amending the Administrative Guideline (03/2015) for the determination of representation expenses.

From all members of KJC, in this meeting discusses Mr. Enver Peci 5 minutes and 55 seconds, Mr. Agim Maliqi 20 minutes and 33 seconds, Mr. Nebojsa Boricic, 3 minutes and 12 seconds, Mr. Neha Idris: 1 minute and 26 seconds, Mrs. Raima Elezi, 1 minute, Mrs. Valdete Daka: 8 minutes and 47 seconds and Mrs. Makifete Saliuka, 15 seconds.
- KJC on January 20, 2016, has held the second meeting for 2016 or its 146th meeting.** During this meeting was approved the content for preparation of the Annual Report of Kosovo Judicial Council in 2015 with the approved changes. KJC has approved also the

Decision to categorize the positions of civil servants in judicial administration, to civil servants.

- **KJC on February 2, 2016, has held the third meeting for 2016 or its 147th meeting.** At this meeting of KJC one of the most important decisions was the decision of the announcement of two vacancies for members of the KJC by the members of the Supreme Court judges. Also at this meeting, KJC has taken the decision to announce the position for the Head of KJC. KJC has approved the Regulation on the Board of SMIL Project, Decision on Amending the Decision on delegation of responsibilities from KJCS to the courts, etc. Most of the decisions adopted at the KJC are adopted unanimously by the present members of KJC.

This LJC meeting lasted 31 minutes, and members who have been most active are: Mr. Enver Peci approximately 15 minutes, Mr. Agim Maliqi nearly 8 minutes, Mr. Nehat Idrizi over 10 minutes, Mrs. Valdete Daka nearly 5 minutes. In this meeting also have discussed other members Mr. Armend Berisha, Mr. Asllan Krasniqi, Mrs. Makifete Saliuka, Mr. Nebojsa Boricic and Mrs. Raima Elezi.

- **KJC on February 10, 2016, has held the fourth meeting for 2016 or its 148th meeting.** At this meeting, KJC chose Mr. Nehat Idrizi, Head of the KJC. This decision was approved by a majority, 8 votes were for the candidate Mr. Nehat Idrizi to be the Head of KJC and 2 for the other candidate Mrs. Makifete Saliuka. The decision was published on the same day. At this point of the agenda have discussed, Mr. Enver Peci, 4 minutes, Mr. Agim Maliqi 2 minutes and 5 seconds, Mrs. Makifete Saliuka 9 minutes and 8 seconds, z. Nehat Idrizi, 10 minutes and 22 seconds and Mrs. Valdete Daka 6 minutes.
- **KJC on March 2, 2016, has held the fifth meeting for 2016 or its 149th meeting.** At this meeting, KJC has unanimously approved the Code of Ethics and Professional Conduct for Judges and the Regulation on the Misconduct of Judges. Approval of the request for two additional positions in the Office of Disciplinary Counsel, etc. This meeting of KJC lasted an hour and nine minutes, and almost all members of KJC have participated actively in discussing all agenda items.
- **KJC on March 8, 2016, has held the sixth meeting for 2016 or its 150th meeting.** In this meeting was conducted the handover and acceptance of the duty of Head of KJC by former Head Mr. Enver Peci to the new Head Mr. Nehat Idrizi.
- **KJC on March 16, 2016, has held the seventh meeting for 2016 or its 151th meeting.**

Among the main decisions of this meeting are the Decision on Appointment of Deputy President of the Basic Court in Gjilan, Mr. Afrim Shala. Also were appointed members of the Committee on normative issues, disciplinary committee, the committee on budget, finance and personnel, committee on court administration.

Also at this meeting, KJC has authorized the Head of KJC to sign a cooperation agreement between KJC and Kosovo Law Institute.

At this meeting have discussed Mr. Nehat Idrizi, Mr. Nenad Lazic, Mrs. Makifete Saliuka, Mr. Asllan Krasniqi, Mr. Dragan Velikovic, Mr. Agim Maliqi, and Mr. Armend Berisha.

At this meeting KJC has decided to announce the additional public competition for the fourteen (14) positions for judges as follows: One (1) position on the Supreme Court; One (1) position in the Court of Appeal; Three (3) positions in the Basic Court in Mitrovica: Two (2) positions in the Basic Court in Mitrovica – branch in Zubin Potok; Three (3) positions in the Basic Court in Pristina: One (1) position in the Basic Court in Pristina - branch in Lipjan; One (1) position in the Basic Court in Pristina - branch in Gracanica: Two (2) positions in the Basic Court in Gjilan - branch in Novoberda.

- **KJC on April 6, 2016, has held the eighth meeting for 2016 or its 153th meeting.**

At this meeting, the Council approved the Regulation on the recruitment, examination, appointment and reappointment of judges, Regulation (06/2016) for Amending Regulation (01/2014) on the Procedure of promotion of judges, was announced the internal competition for two (2) vacancies for judges in the Supreme Court and four (4) vacancies for judges at the Court of Appeal and the competition for 61 positions for judges of basic courts.

Also at this meeting was approved Memorandum on cooperation between the KJC and Kosovo Law Institute.

The decisions adopted by KJC at this meeting are published 14 days after their adoption. But, almost all members of the KJC took part in discussion and debate on the issues of the agenda.

- **KJC on May 11, 2016, has held the ninth meeting for 2016.** At this meeting, KJC has adopted Regulation No. (07/2016) for amending Regulation No. 05/2016 on Recruitment, Examination, Appointment and Reappointment of Judges, the Decision to amend the Code of Ethics and Professional Conduct for Judges and was approved the annual report of the work of the Kosovo Judicial Council for 2015, etc.

All decisions taken by the Council on this date were published on its official website.

- **KJC on May 25, 2016, has held the tenth meeting for 2016.** At this meeting was adopted the Regulation (08/2016) on Amending and Supplementing Regulation No. 02/2015 on the Election of Members of the Judicial Council from the Judiciary as well as the announcement for two (2) vacancies for members of the Judicial Council among the judges of the Basic Courts. It was adopted the Regulation (09/2016) on the Selection procedures, assessment, suspension and dismissal of court presidents and supervising judges and was announced the competition for the President of the Basic Court in Peja.

In this meeting was refused the request of Mr. Ibrahim Shala, a judge in the Basic Court in Peja, branch in Klina to make the permanent transfer from this Court to the Basic Court of Pristina, branch in Glllogoc.

Decisions relating to this meeting are published on the KJC website. Also, almost all members of the KJC took part in discussion and debate during the meeting.

2. ADOPTION OF SECONDARY LEGISLATION BY KOSOVO PROSECUTORIAL COUNCIL

KPC during the first six months of 2016, has not shown efficiency regarding the drafting of secondary legislation and the fulfillment of the obligations arising from the applicable legislation for the prosecutorial system in Kosovo. KPC during this period has adopted the following regulations:

1. Regulation on Transfer and Promotion of State Prosecutors;
2. Regulation on Institutional Cooperation;
3. Regulation of Interception Liaison Unit; and
4. Regulation on Communication with the Public.

KPC during the first six months of 2016, has adopted the Administrative Guidelines:

1. The use of fix and mobile phone in KPC and State Prosecutor,;
2. Determining the costs of representation; and
3. Cases of domestic violence.

2.1. Regulation on the Transfer and Promotion of Prosecutors

KLI on the report published on April 27, 2016, had highlighted the lack of rules and procedures in KPC regarding the transfer and promotion of prosecutors¹¹. As a result, transfer and promotion of prosecutors was not based on criteria and equal conditions for all prosecutors in the prosecutorial system, bypassing the competition institute.

KPK on March 31, 2016, has approved the Regulation on Transfer and Promotion of Prosecutors¹². This regulation sets out the procedures and criteria for the transfer and promotion

11 KLI-Legality of the Judicial and Prosecutorial Council (Monitoring of Kosovo Judicial and Prosecutorial Council –Analysis of the implementation of the judicial package of judiciary), April 27, 2016, in: <http://kli-ks.org/wp-content/uploads/2016/04/02.-Legality-of-the-Judicial-and-Prosecutorial-Council-27.04.2016.pdf>

12 Regulation No. 03/2016, on the Transfer and Promotion of Prosecutors, adopted on March 31, 2016, Kosovo Prosecutorial Council. (See link: <http://kpk-rks.org/en/legislacionii/196/rregulloret-2016/196>). (Last accessed on August 30, 2016).

of state prosecutors, methods of application, etc. Regulation for the first time in the prosecutorial system sets unique standards and practices concerning the transfer and promotion of prosecutors, creating equal opportunities for all state prosecutors that meet the criteria for transfer and career advancement

Article 9 of the Regulation may be an obstacle during the implementation of the regulation in practice, concerning the fact that the prosecutors that were once subject of disciplinary measures (except in cases of disciplinary measure of reprimand) won't be able to apply and have the opportunity to be transferred or advanced throughout their careers in the future. KPC should review this provision, so that the sanction imposed on prosecutors to limit their right to transfer or advanced for a limited period of time of two or three years. Such an approach can achieve the goal to establish accountability and responsibility of prosecutors in Kosovo prosecutorial system.

2.2. Regulation on Institutional Cooperation

KPC on May 16, 2016 approved the Regulation on Institutional Cooperation.¹³ The purpose and scope of this Regulation sets out the obligation of the State Prosecutor to notify public institutions when against the officials of these institutions has been initiated criminal investigation, involving mainly civil servants who work in the public institutions or employees in the public sector under the Law on Labour.

The purpose and scope of this regulation, namely Article 2 and Article 4 fall in contradiction with each other.

While Article 2 of this Regulation refers to the obligation of the State Prosecutor notify public institutions only when civil servants and other employees are in conflict with the law, according to the Law on Civil Service and Law on Labour, its Article 4 expands State Prosecutor's obligations also in cases when judges or lay judges are subject of indictments or subject to the initiation of criminal proceedings. KLI considers that it represents absurd of its kind.

Procedures of election, appointment, suspension or dismissal of judges and lay judges are regulated by the Law on Courts, the Law on Kosovo Judicial Council and the internal acts adopted by Kosovo Judicial Council. Law on Civil Service and Law on Labour and none of its provision finds implementation against a judge and lay judge.

¹³ Regulation no. 582/2016 on institutional cooperation, adopted by Kosovo Prosecutorial Council on May 16, 2016. (See link: http://www.psh-ks.net/repository/docs/Nr.582.2016-RREGULLORE_NR.04.2016-Per_bashkepunim_Institucional.pdf) (Last accessed on September 20, 2016).

However, this regulation and the approach established by itself, has limited implementation and relates only when the subject of criminal proceedings are mainly civil servants or low positions in the public and state institutions.

The same regulation is not intended to be implemented in cases where they fall in contradiction with the law, leading positions in the public and state institutions, such as prosecutors, members of KJC and KPC, or other equivalent position.

Also, this regulation had no legal provision that would protect personal data relating to persons that are subject of criminal proceedings, as well as other information about the case, which in practice could affect the investigation and successful prosecution. In the early stages of pre-criminal procedure or criminal proceedings, accessing information from a certain number of persons who have no authority and responsibility to investigate and conduct investigations constitutes a potential risk that this information may be misused and this impacts on the quality of investigation but also the violation of the applicable legal provisions regarding the protection of personal data.

KLI considers that the role of the State Prosecutor to inform the holders of the institutions concerning investigations conducted against officials of these institutions first puts in risk the conduction of independent investigations, impartial and professional, and secondly puts in risk the rights and freedoms of persons who may only be the subject of a criminal investigation because against immediately begin the procedures of suspension from work. KLI considers that this is a wrong approach and highly dangerous, through with are prosecuted public officials who can only be the subject of criminal investigations, putting so in risk the presumption of innocence in public because the suspension of officials is made public and consequently their judgment in public regarding their guilt is ready. In addition to these above mentioned reasons, KLI opposes this approach, based on the fragility of the functioning of the prosecutorial system and political influence, which can be misused to eliminate extremely innocent officials only because of different agendas.

KPC during the adoption of this regulation in the absence of regulations and other internal acts regarding the classification and qualification of documents in the prosecutorial system should take into account the principles, procedures and criteria established by the Law on Protection of Personal Data¹⁴ and the Regulation on security measures during the processing of personal data¹⁵.

¹⁴ Law No. 03/L-172 on Protection of Personal Data. Adopted by Assembly of Kosovo on April 29, 2010. (See link in: <http://www.kuvendikosoves.org/common/docs/ligjet/2010-172-eng.pdf>)

2.3. Regulation on Interception Liaison Unit

Kosovo Assembly on May 28, 2015, had adopted the on Interception of Electronic Communications.¹⁶ This law regulates the procedures and conditions on the interception of electronic communications that are realized for the purpose of criminal proceedings by state institutions established by law, and procedures and interception conditions for the security needs of the Republic of Kosovo and its citizens established by law.

The law has also determined the powers and duties of state institutions established by law to ensure respect for human rights and freedoms in the process of lawful interception and control in implementing interception procedures.

This law has defined a series of obligations on KPC and State Prosecutor regarding its practical implementation, including the drafting of secondary legislation and functioning of the liaison unit within the State Prosecutor.

This law defines the obligation of KJC on appointing of the Commissioner for Supervising the Process of Interception of Communications (Commissioner), from the composition of the Judges of Supreme Court, as well as an obligation that KJC through internal acts to regulate the engagement of officials, technical support and other necessary procedures for the implementation of the mandate of the Commissioner no later than three (3) months after the entry into force of this law.

KPC on May 31, 2016 approved the Regulation on Interception Liaison Unit¹⁷, in order to fulfill the obligations arising from the Law on Interception of Electronic Communications.

Despite the fact that through this regulation KPC has fulfilled a legal obligation associated with the establishment of the Interception Liaison Unit, functioning of the office should be followed by other relevant legislation concerning the classification and qualification of documents in the prosecutorial system.

15 Regulation No. 03/2015, on security measures during the processing of personal data, adopted on May 7, 2015, by the Chief State Supervisor of the Agency for Protection of Personal Data and amended with the Regulation No. 6/2015, adopted on December 28, 2015 (See links: http://amdp-rks.org/web/repository/docs/2015_03_ashmdhp_rregullore.pdf and http://amdp-rks.org/web/repository/docs/2015_06_ashmdhp_rregullore_plotesim_rreg_2015_03.pdf) (Last accessed on September 21, 2016).

16 Law No. 05/L-030 on Interception of Electronic Communications. (See link in: <http://www.kuvendikosoves.org/common/docs/ligjet/05-L-030%20a.pdf>) (Last accessed on September 21, 2016).

17 Regulation No. 5/2016, on the Interception Liaison Unit, adopted by Kosovo Prosecutorial Council on May 31, 2016. (See link in: <http://kpk-rks.org/en/legjislacionii/196/rregulloret-2016/196>) (Last accessed on September 21, 2016).

Such an obligation is provided also in Article 16 of the Basic Law, which stipulates that the Liaison Unit shall maintain records of activations of interceptions. Such records are stored in accordance with secondary legislation issued by the Prosecutorial Council, after consultation and agreement with the Agency for Protection of Personal Data and Regulatory Authority of Electronic and Postal Communications, and is reported upon the request for Commissioner's attention.

The basic law regarding interception of electronic communications and other applicable laws define basic principles and procedures regarding the classification and qualification of documents in public and state institutions.

However, in order to respect human rights and fundamental freedoms recognized and guaranteed by the Constitution and the European Convention on Human Rights and Freedoms, including as interpreted by the European Court of Human Rights through its judicial practice, as the storage of information and data as a result of interception and the lack of confidential information flow of secrets to unauthorized persons, KPC shall adopt rules and clear procedures regarding the qualification and classification of documents in the prosecutorial system, including the subjects that can have access to these documents.

2.4. Regulation on Communication with the Public

KPC on May 31, 2016, adopted the Regulation on Communication with the Public.¹⁸ The purpose of this regulation is to regulate the manner of communication between the prosecutorial system and public. Despite the fact that this adopted regulation applies high practices and standards in relation to increasing transparency of prosecutorial system in Kosovo, its implementation in practice is almost impairing the purpose of this regulation.

KLI with the purpose of measuring the readiness and willingness of judicial and prosecutorial system to implement legal obligations on transparency of these institutions during the first nine months of 2016, had addressed 70 requests for access to public documents related to the fulfillment of legal obligations, provision of information, statistics and other available data and permissible under the Law on Access to Public Documents and Regulation on the Communication with the Public.

¹⁸ Regulation No. 06/2016 on Communication with the Public adopted by Kosovo Prosecutorial Council on May 31, 2016. (See link: http://www.psh-ks.net/repository/docs/Regulation_on_Communication_with_the_Public_06_2016_en.pdf, Last accessed on September 21,2016).

Of the 70 requests for access to public documents, 28 requests were sent to judicial system, of which KLI has received 25 positive responses, while for 3 requests has not received any response.

Of the 70 requests for access to public documents, 42 requests were sent to prosecutorial system, of which the prosecutorial system has responded positively to 24 requests, for 17 requests has not responded, and for 1 request refused to provide the requested data. The large number of positive responses belongs to all the Chief Prosecutors of Basic Prosecution offices, with the exception of Chief Prosecutor of SPRK office and BP office in Ferizaj, who did not respond to a legal obligation to provide the data required by KLI.

Of the 17 requests for which KLI has not received a response from the prosecutorial system, by not fulfilling its legal obligations, leads the Prosecutorial Council itself with 6 requests, SPRK with 3 requests, Chief State Prosecutor with 2 requests, BP in Ferizaj with 3 requests, BP in Gjilan with 2 requests the Director of the Secretariat of KPC with 1 request.

Failure to implement legal obligations and policies adopted by the Council by the main actors of the prosecutorial system, such as its KPC and Chief State Prosecutor, strengthens the findings KLI and assessments arising from international and local reports regarding the unwillingness of prosecutorial system to be transparent and accountable to the public. Non-fulfillment of obligations proves that the law in Kosovo is not applied the same to all. In cases where senior officials do not fulfill their obligations and responsibilities, impunity culture continues to be developed.

Even the current Head of KPC and Chief State Prosecutor, before they were appointed to these positions they have promised to increase transparency, accountability and partnership with the public and media.

Head of KPC during the declaration of candidacy for this position in the first meeting of the KPC for 2016, had promised to increase transparency in prosecutorial system. Meanwhile the Chief State Prosecutor, at the concept paper presented before the KPC during its candidacy for Chief State Prosecutor, had emphasized that "transparency in the State Prosecution should be raised to a higher level, with the aim of promoting the work of prosecutors. Increasing transparency should be done through communication between the Prosecution offices with the media and the public, always respecting the law on protection of personal data and the law on access to public documents, and maintaining the confidentiality of the cases in order not to damage the investigation and rights and freedoms of the defendant in the proceedings."¹⁹

19 "Rhetoric in Fighting Corruption: *Monitoring report of the treatment of corruption cases in justice system in Kosovo*". (Pristina: *Kosovo Law Institute*). October 27, 2016. Page 20. (See link: <http://kli-ks.org/wp-content/uploads/2016/10/2.-RHETORIC-IN-FIGHTING-CORRUPTION-27.10.2016-1.pdf>) (Last accessed on December 20, 2016).

Also, the Chief State Prosecutor, stated that "as civil society, non-governmental organizations and the media are telling the attentive to the prosecutorial system and as such, monitoring and measurement of integrity which the prosecution system reflects itself, KPC has signed memorandum of cooperation with the organization responsible for independent monitoring of the prosecutorial system. These memorandums were signed in accordance with the law on public information disclosure that are held by the State Prosecutor, in order to increase transparency, efficiency and accountability of the State Prosecutor. KLI considers that these statements and their public words, have remained only on paper.²⁰

KPC on December 1, 2015, has adopted the Strategic Plan (2016-2018) and the Action Plan for Increasing the Effectiveness of the Prosecutorial System in the fight against Corruption and Economic Crimes, including Sequestration and Confiscation of Illegal Assets (hereinafter: Action Plan). This Strategic Plan has set several goals such as reduction of the number of unsolved cases, increasing efficiency in solving new cases, increasing the level of cooperation with institutions, increase capacity through specialized trainings, accountability and transparency.²¹

Despite the fact that this strategic plan was approved on December 1, 2015, it was never published in the official website of KPC and State Prosecutor. This proves that the will of the prosecutorial system proclaimed through policies in increasing transparency and accountability in practice is not being implemented

2.5. The strategic plan 2016 – 2018 of Kosovo Prosecutorial Council

KPC on February 12, 2016, adopted the Strategic Plan 2016-2018²² on Kosovo Prosecutorial Council. The strategic plan consists of four strategic pillars, as presented below:

- Strengthen the Institutional Structure and Capacities of the Prosecutorial System;
- Promoting Competence and Professionalism;
- Enhancing Outreach and Public Relations; and
- Improving Facilities and Technology.

This strategic plan has foreseen that the fulfillment of these strategic pillars to be conducted through strategic objectives.

²⁰ Ibidem 19

²¹ Ibidem 19, page 13

²² Strategic Plan 2016-2018 on Kosovo Prosecutorial Council. (See link: <http://www.kpk-rks.org/en/raporte/86/plani-strategjik/86>) (Last accessed on December 18, 2016).

KPC as part of this strategic plan has foreseen the monitoring and assessment of strategic and action plans that will ensure sustainability of goals and strategic objectives for a longer term.

KLI while analyzing the strategic plan, has found that the same one has identified the problems and challenges which the prosecution system is facing, and the same one has set strategic objectives which if applied in practice will have an impact on increasing accountability, transparency and efficiency of the prosecutorial system in Kosovo.

KLI during 2017 will monitor the implementation of the strategic objectives set by KPC, for what will prepare a special report.

3. ACCOUNTABILITY AND INTEGRITY IN PROSECUTORIAL SYSTEM AND CONTROL MECHANISMS

KLI during the monitoring process of KPC’s work, has found that KPC has not achieved to fulfill the basic obligations regarding the implementation of basic laws and basic regulations adopted by the Council itself. KLI has found out that the control and supervising mechanisms within KPC eventhough have been established in paper, in practice they are not being implemented. Prosecutorial system is passing into an institutional crisis phase when theres a mix and conflict of competences between the Council itself and the Chief State Prosecutor.

Lack of control and supervision, in practice, are contributing also have a lack of accountability in the prosecutorial system, lac of efficiency and responsibility, which are affecting the installation of impunity in practice, as elaborated in the table below.

Legal obligations of prosecutorial system	Fulfilled	Unfulfilled	Deadline
Annual Work Report of SP ²³			March of the respective year
Annual Work Report of KPC		X	March of the respective year
Prosecutors Performance Assessment		X	1/3 of prosecutors within the year
Appointment of the Director of the Prosecutors Performance Assessment Unit		X	

23 Meanwhile, Chief State Prosecutor, Aleksandër Lumezi on April 21, 2016, at a press conference has presented the Work Report of the State Prosecutor for 2015, where were presented the achievements, challenges and failures of State Prosecutor. The same report was never presented to KPC for review and approval.

Appointment of the KPC member by civil society		X	January 1, 2016
Chief Prosecutors Reporting to KPC		X	Every three months
Adoption of the Work Plan of SP for 2015		X	October of the respective year
Reporting to the public for the implementation of its objectives set out in a specific manner and based on measurable indicators every six (6) months.		X	Every six months within the calendar year

Table 4 – Fulfillment of legal obligations of prosecutorial system

KLI ongoing has analyzed the implementation of legal obligations based on indicators set in accordance with the legal liabilities of prosecutorial system.

3.1. Illegal composition of Kosovo Prosecutorial Council

Law on Kosovo Prosecutorial Council (Law) defines that except for ex officio members, Council members are elected or appointed for a five (5) year term. A member may be elected to one additional non-consecutive term of five (5) years.

Council's member, Idain Smajili with the decision of KPC, A.no. 05/11, on February 15, 2011, was elected member of the Prosecutorial Council of the Republic of Kosovo, from prosecutors of Municipal Prosecution Offices. With the transition to the new organizational structure of prosecution offices, according to the Law on State Prosecutor from January 1, 2013, the new composition of the Council should have a member from the Appellate Prosecution Office. In this regard, according to the proposal of the Appellate Prosecution Office, KPC during December 2012, had decided for Idain Smailji to continue his mandate as member of the KPC, but now by representing the Appellate Prosecution Office. KLI considers that the decision to extend the mandate as member of KPC, from KPC prosecutors, should not be interpreted as the beginning of a new mandate from January 1, 2013, but the extension of the mandate that had begun on February 15, 2011, as the law already defines.

KPC regarding the mandate of the Council members had discussed during two KPC meetings, in December 2012. International partners who have supported KPC at the time, as well as members of KPC, had concluded that the mandate of a KPC member expires naturally when it ends the five year mandate from the time he was elected, when the condition or status on which he was elected member of the Council changes.

According to the Law, the five (5) year mandate of Smajili as a member of the Council has ended on February 15, 2016. Despite this fact, the prosecutor of the Appellate Prosecution Office, Idain

Smajili continues to exercise the mandate of a member of the Council illegally and in contradiction with the practices built by KPC in 2012.

Also, Article 6 of the Law on Amending and Supplementing the Law on KPC, among others has determined among other things that the functioning of KPC members as members ends with the expiration of the mandate, respectively in cases where a member of KPC fulfils the mandate of five (5) years as a member of KPC from the time he was elected to that position.

The illegal composition practice of KPC continues also during 2016, respectively from February 15, 2016, when the prosecutor of the Appellate Prosecution Office has fulfilled five (5) years as a member of the Council. Idain Smajili, from January 1, 2016 by a decision of the KPC was elected Vice-President of KPC. Moreover the same is also Chairman of the Committee on the Performance Evaluation of Prosecutors and until recently has served also with a decision from KPC as Chairman of the Disciplinary Committee of KPC.

The practice of adopting regulations and decisions by KPC in contradiction with the Law on KPC, is continuing also with the case of the prosecutor Smajili.

The Constitution and the Law on KPC have dominant power in relation to Decisions and Regulations adopted by KPC. The Council has no legal authority to extend the mandate of KPC members through regulations and decisions. The extension of the mandate of the KPC member, in contradiction with the law, constitutes serious violation of the law, and thus has risked the functionality, legitimacy and legality of KPC itself during the decision making, approval and implementation of policies process.

Furthermore, concerning is the fact that KPC is in the process of appointing new prosecutors in all Basic Prosecution Offices and has announced the competition for Chief Prosecutor of Basic Prosecution Offices. Concerning is also the fact that the same Council during the time when Smajili has exercised the function of KPC member, illegally has selected and appointed Chief Prosecutors in SPRK and the Appellate Prosecution Office.

Decisions adopted by KPC with illegal composition, may be subject of court proceedings, including the Administrative Court and the Constitutional Court in cases of violation of human rights and freedoms, as a result of decisions adopted in the Council, where Smajili has participated in the discussion or voting of decisions.

The legitimacy and legality of the KPC, constitutes a basic standard for a fair, impartial, independent and professional functioning of the prosecutorial system, including the administration and management of the State Prosecutor. KPC has legal and constitutional obligation to put forward the general interest before individual interests, in this case the interests

of a KPC member. As, the installation of illegal practices by the institution itself, which is called to supervise and control the legitimacy and accountability of all prosecutorial system, is the most unfair message that is sent to all the staff in the prosecutorial system regarding the protection of values, ethics and image of the system itself.

3.2. Annual Work Report of State Prosecutor for 2015

KPC has failed to implement the obligation for adopting the annual work report of the State Prosecutor for 2015.

Article 4 paragraph 1 item 12 of the Law on KPC stipulates that KPC is obliged to prepare an annual report on the activities of State Prosecutor and expenditures of the Council.

KPC during the first six months of 2016, has not reviewed and approved the Work Report of the State Prosecutor for 2015.²⁴

Chief State Prosecutor, Aleksandër Lumezi on April 21, 2016, at a press conference presented the Work Report of the State Prosecutor for 2015, where were presented the achievements, challenges but also the failures of the State Prosecutor.²⁵

The same report was never presented before the KPC for review and approval. Non-approval of the work report of State Prosecutor by KPC, is a violation of legal obligations and ignorance of KPC by the Office of the Chief State Prosecutor.

With the entry into force of amendments of judiciary package of laws, has changed and the structure and powers and responsibilities of the Chief State Prosecutor in relation with the KPC itself.

Whereas, until December 31, 2015, the Chief State Prosecutor was also the Head of KPC, from January 1, 2016, the Chief State Prosecutor is the only a member of KPC, and the same one for the work of the Office of the Chief State Prosecutor, in particular of the State Prosecutor generally reports to KPC, through the annual report. This obligation has not been fulfilled.

²⁴ Note: KPC until December 20, 2016, has not reviewed and approved the Annual Work Report of State Prosecutor for 2015.

²⁵ Note: Chief State's Prosecutor conference, Aleksandër Lumezi, April 21, 2016. (See link: <http://www.psh-ks.net/en/news/speech-of-chief-state-prosecutor-aleksander-lumezi-at-the-conference-held-regarding-the-presentation-of-the-annual-performance-of-state-prosecutor>)

3.3. Annual Work Report of Kosovo Prosecutorial Council for 2015

Article 4 paragraph 1 item 12 of the Law on KPC stipulates that KPC is obliged to prepare an annual report on the activities of State Prosecutor and expenditures of the Council.

Also KPC according the Law on amending and supplementing the Law on KPC, has defined the obligation of the Council on reporting to the public for the implementation of its objectives set out in a specific manner and based on measurable indicators every six (6) months.

KPC during the first six months of 2016, did not meet the legal obligations on the annual report of the costs of the Council, the annual work report of KPC or reporting to the public for the implementation of its objectives set out in a specific manner and based on measurable indicators every six months.

KPC on December 29, 2015, had approved the Regulation No. 10/2015 on the organization of the activity of KPC. In Article 41 of this regulation, KPC has defined the obligation of approval and publication of the annual work report of KPC until March 31 of the following year. This article has obliged the Secretariat to assist the Council in preparing in time the draft report for review and approval to the Council.

The Secretariat and the Council have failed to meet this obligation. KPC until December 24, 2016, did not meet also none of the abovementioned legal obligations.

Lack of fulfillment of KPC obligations, in practice proves the unwillingness of the Council and the Secretariat to implement the law, and to find accountability in relation with the public. Lack of fulfillment of legal obligations, strengthens the practice of impunity of the Prosecutorial Council's leaders itself and responsible persons in the Secretariat.

3.4. Prosecutors performance assessment and disciplinary measures

Law on amending and supplementing the Law on KPC, in Article 14 / B, has defined the establishment of the Committee for prosecutor's performance assessment. The Committee for prosecutor's performance assessment is composed of prosecutors with experience and high professional and personal integrity.

KPC on August 29, 2011, had adopted the Regulation on Prosecutors Performance Assessment. Through this regulation were set the procedures and criteria for prosecutor's performance assessment.

KPC also on October 24, 2013²⁶, had adopted a new regulation regarding the prosecutor's performance assessment. Through this regulation KPC had set the goal that by this regulation to be conducted the assessment and improvement of prosecutors performance, determining how the assessment and the establishment of the Committee for prosecutor's performance assessment.

Article 4 of this regulation has also defined the assessment period of prosecutor's performance. According to this regulation, prosecutors with initial mandate should be assessed twice within three years, meanwhile prosecutors with permanent mandate, should be assessed every three years. This regulation has also specified the obligation that KPC should do the assessment of all prosecutors serving in the prosecutorial system for three years.

KLI despite many requests sent to the Head of KPC, Director of the Secretariat and Acting Director of Prosecutors Performance Review Unit, Mr. Lavdim Krasniqi, did not received any information about the process of prosecutor's performance assessment and the number of disciplinary measures against prosecutors for the first six months of 2016.

3.5. Chief Prosecutors reporting to KPC

KPC on December 29, 2015 had approved the Regulation on the Internal Organization and Functioning of State Prosecutor.²⁷ Article 9 of this regulation sets out the responsibilities of the Chief Prosecutors in relation to KPC. Article 9 Section 1.4 of this regulation obliges the Chief Prosecutors to submit to KPC a written report on the work of the prosecution, difficulties and propose measures related to improving the performance of the prosecution on quarterly basis.

KLI while monitoring KPC meetings, in the first six months of 2016 and by the end of 2016, has found that in no meetings of KPC, have not been reviewed or discussed the work reports or obligations of Chief Prosecutors to KPC.

Also there has been the lack of KPC initiative to invite Chief Prosecutors of Prosecution offices to report to KPC, failing to meet legal obligations to ensure accountability.

Also, KPC during 2016, has failed to implement the obligation to adopt a work plan for State Prosecutor for 2016 as defined by Article 20 of the regulation on internal organization and functioning of State Prosecutor. According to this article, the work plan should contain the duties and tasks of the State Prosecutor that should be carried out within the relevant year.

26 Regulation on Prosecutors Performance Assessment No. 1186/2013. (See link: <http://kpk-rks.org/en/legjislacionii/157/2013-/157>) (Last accessed on September 20, 2016).

27 Regulation no. 1461/2015, on the internal organization and functioning of State Prosecutor. (See link: <http://kpk-rks.org/legjislacionii/155/2015/155>). (Last accessed on September 20, 2016).

Also Article 21 of this regulation obliges the Secretariat in drafting the work plan in consultation with all prosecution offices, an obligation that is not implemented by the Director of the Secretariat.

Lack of approving work plans, reporting of Chief Prosecutors and non-fulfillment of Secretariat obligations demonstrate in practice the utter failure of the prosecutorial system in the efficient management and administration of the prosecution offices, which in practice also affects the lack of results and weak performance

3.5.1. Kosovo Prosecutorial Council meetings

KPC from January 1, 2016 until June 30, 2016 held a total of 7 meetings, which generally falls approximately one meeting per month.

3.5.2. Discussions of KPC members during the adoption of policies and publication of decisions

KLI has monitored in details all the meetings of KPC, including participation in the discussion by all members of the Council. The findings show that there is no democracy in KPC due to the lack of discussion and debate during the policy making and decision making in the Council. Of 42 decisions adopted by KPC during the first six months of 2016, 41 decisions were voted unanimously, while in only one decision a member abstained. Also, KLI has found there are members in KPC, whose voice was never heard in public meetings of the KPC. KLI expresses deep concern with this approach of the Council members, who are being proved as a mechanism which look like the voting machines, which are managed by the Head of KPC and Chief State Prosecutor. In the table below is presented the discussing contribution of each member at each meeting monitored by KLI.

MONITORING OF THE DISCUSSION OF KOSOVO PROSECUTORIAL COUNCIL MEMBERS AT COUNCIL'S MEETINGS (01.01.2016 – 30.06.2016)								
Time period January 1- June 30, 2016	14.01. 2016 Meeting 111	12.02. 2016 Meeting 112	02.03 2016 Meeting 113	31.03 2016 Meeting 114	22.04 2016 Meeting 115	27.05 2016 Meeting 116	15.06. 2016 Meeting 117	Total:
Blerim Isufaj (Head) SPRK	6 min 43 sec	30 min	15 min	14 min	10 min	11 min	11 min	1 hour, 37 min
Aleksandër Lumezi - OCHSP	23 min 30 sec	15 min	5 min	5 min	Passive	Passive	23 min	1 hour 8 min
Bahri Hyseni BP Ferizaj	11 min 23 sec	15 min	10 min	15 min	Passive	10 min	9 min	1 hour 10 min
Dëshira Jusaj BP Gjakova	Passive	3 min 8 sec	5 min	Passive	Passive	Passive	Passive	8 min 8 sec
Ikramije	Passive	40 sec	1 min e	Passive	Passive	Passive	Passive	1 min

Bojaxhiu - BP Pristina			15 sec					55 sec
Radica Milic BP Mitrovica	Passive	Passive	1 min	Passive	Passive	Passive	Passive	1 min
Zejnullah Gashi BP Prizren	Passive	30 sec	Passive	Passive	Passive	Passive	Passive	30 sec
Arben Ismajli BP Gjilan	Passive	Passive	1 min	3 min	Passive	Passive	Passive	4 min
Haxhi Sinanaj BP Peja	Passive	Absent	Passive	Passive	Passive	Passive	Passive	0 min 0 sec
Idain Smajli AP	Passive	Passive	Passive	Passive	Passive	Passive	1 min 14 sec	1 min 14 sec

Table 5 – Participation in discussion of Prosecutorial Council members

Following are presented all meetings, in which are included the decision that were taken and discussions of KPC members.

- KPC the first meeting in 2016, has held on January 14, 2016 or its 111th meeting,** where they have discussed and adopted two decisions. At this meeting, KPC has decided to appoint Mr. Blerim Isufaj as Head of the KPC from the ranks of the SPRK. Mr. Isufaj received 6 votes in favor, 1 abstention and the other candidate Mr. Bahri Hyeni received 3 votes in favor. The decision was published in the official website of KPC on the same day.

At the same day KPC has continued the mandate of Mr. Idain Ismaili, as deputy/ Head of KPC.

This meeting of KPC lasted 41 minutes and 30 seconds. Of the ten members of KPC, the discussion attended only three members, Mr. Blerim Isufaj 6 minutes and 43 seconds, Mr. Bahri Hyseni with 11 minutes and 23 seconds and Mr. Aleksandër Lumezi with 23 minutes and 30 seconds.
- KPC on February 12, 2016, has held the second meeting for 2016 or its 112th meeting.** On this meeting did not participate the member of KPC Mr. Haxhi Sinani. During this meeting were discussed 11 agenda item, where all decisions adopted were unanimously voted by all present members of KPC.

Characteristic of this meeting, is that despite the fact that were discussed and adopted policies of interest to the prosecutorial system, participation in debate and discussion of the majority of members of KPC has been very limited.

It is worth mentioning that during this meeting was approved the case of threat of SPRK prosecutor, Mr. Admir Shala and approval of the 2016-2018 strategic plan for the KPC. While regarding the threat against prosecutor Shala have discussed five members of the KPC, regarding the second point related to the adoption of a strategic document concerning the prosecutorial system for the next three years, KPC members have not discussed at all related this point and adopted unanimously. Head of KPC through a short presentation of one minute has presented the strategic plan and the same one was

approved. Eight other members of KPC, did not discuss at all discuss or debate on this point of the agenda.

Also on this date, KPC has taken the decision to announce the 22 positions for prosecutors in basic prosecution of offices in Kosovo.

The second meeting of KPC for 2016, lasted 1 hour, 39 minutes and 43 seconds. Despite the adoption of policies of interest to the prosecutorial system, three members of KPC, during the meeting did not take part in discussion and debate on these points. Prosecutors who did not participate in the discussion at all are: Mrs. Radica Milic, Mr. Arben Ismaili and Mr. Idain Smaijili. While the contribution of Mr. Zejnullah Gashi in this meeting was 30 seconds, Mrs. Ikramije Bojaxhiu 40 seconds and Dëshira Jusaj with 3 minutes and 8 seconds. The most active members in the meeting were Mr. Blerim Isufaj with over 30 minutes discussion Mr. Aleksandër Lumezi over 15 minutes discussion and Mr. Bahri Hyseni over 15 minutes discussion.

Large number of decisions adopted in the Council are published in the official website of KPC almost one week after the approval of the same ones.

- **KPC on March 2, 2016, has held the third meeting for 2016 or its 113th meeting.** At this meeting, KPC has discussed seven points from the agenda of the day. Among the points of interest, are the transfer of five prosecutors from the General Department to the Department for Serious Crimes and Juveniles, as well as appointment of heads of Departments in BP office in Pristina. KPC by a decision has also appointed 22 positions announced for prosecutors in Basic Prosecution offices.

In this meeting participated ten members of KPC. Also characteristic of this meeting, is the adoption of almost all decisions unanimously, as well as the lack of participation in debate and discussion for most of the issues from the agenda.

At this meeting from ten members of KPC, only seven members have discussed and participated in debates, while three members do not discuss at all, such as Mr. Idain Smaijili, Mr. Zejnullah Gashi and Mr. Haxhi Sinanaj.

In this meeting that lasted 57 minutes, the Head Mr. Isufaj has actively participated for approximately 15 minutes, Mr. Bahri Hyseni nearly 10 minutes, Mrs. Dëshira Jusaj over 5 minutes, Mr. Aleksandër Lumezi over 5 minutes, and Mrs. Radica Milic and Mr. Arben Ismaili with 1 minute each.

Almost all decisions adopted at this meeting are published 12 days after their adoption in KPC.

- **KPC on March 31, 2016, has held the fourth meeting for 2016 or its 114th meeting.** At this meeting was adopted the regulation on the transfer and promotion of prosecutors,

Mr. Ali Selimaj was appointed Acting Chief Prosecutor of BP office in Gjakova, and was approved the report of the Commission to review the eligibility of candidates nominated by civil society for member of KPC. In this meeting participated ten members of KPC. All items on the agenda at the Council were adopted unanimously and with a lack of debate and discussion. Of 44 minutes as lasted the meeting, during which have discussed only Mr. Blerim Isufaj with 14 minutes, Mr. Bahri Hyseni with 15 minutes, Mr. Aleksandër Lumezi with 5 minutes and Mr. Arben Ismaili with 3 minutes.

Also during this meeting have not participated in discussion six members of KPC, which are Idain Smajili, Zejnullah Gashi, Haxhi Sinanaj, Ikramije Bojaxhiu, Radica Milic and Dëshira Jusaj.

Two decisions adopted by KPC, are published 14 days after their adoption

- **KPC on April 22, 2016, has held the fifth meeting for 2016 or its 115th meeting.** KPC during this meeting had discussed four points of the agenda, where was approved the report inter-institutional tracking mechanism on characteristic offenses for 2015, was adopted the Regulation on institutional cooperation, was announced the competition for Chief of Prosecutor at SPRK and Prosecution office of Appeal, and was established the committee for transfer and promotion of State prosecutors

Even these four points of the agenda were adopted unanimously by KPC. Effectiveness of approval of these decisions by KPC has been extremely high. This meeting of KPC has ended within just 10 minutes. Despite the fact that during this meeting was approved the tracking mechanism on characteristic offenses such as corruption, organized crime and serious offenses, KPC members have participated with only 10 seconds discussion and than have voted for this point.

At all points on the agenda only the Head of the Council opens the discussion for the agenda items which are approved without any debate, questions or clarifications. The only contribution that all members of KPC give, is the raising of the hand and the manner of voting unanimously.

- **KPC on May 27, 2016, has held the sixth meeting for 2016 or its 115th meeting.**

During this meeting, KPC has discussed eight agenda points, where was approved the regulation for communication with the public, regulation on interception liaison unit, the analytical report for characteristic offenses for 2013.2014 and 2015.

During this meeting, was established the Committee for reviewing applications for Chief Prosecutor at the Appellate Prosecution office and Special Prosecution office of the Republic of Kosovo. This is one of the rare decisions adopted in KPC, with one member abstaining and members vote in favor.

Also at the meeting was approved the decision on amending and supplementing the Committee for reviewing requests of candidates from non-majority community in Kosovo.

The decision on compensation for prosecutors engaged in the Committees of the Council was approved at this meeting of KPC, which decision is not published at all on the official website of KPC.

At this meeting was taken the decision for the appointment of the Acting Director of the Prosecutors Performance Unit. KPC has decided that the Director of the Secretariat Mr. Lavdim Krasniqi, at the same time to be appointed as the Acting Director of the Prosecutors Performance Unit. From that time Mr. Krasniqi carries two director positions in KPC, which constitutes a unique example in public and state administration for a person at the same time to be director in two offices with completely different powers and responsibilities.

KPC at this meeting has taken illegal decision on the transfer of the prosecutor Mr. Abdurrahim Islami, to extend the mandate for six months as prosecutors in SPRK. At this point of agenda nobody discusses the legality of the decision, but all members vote unanimously to transfer prosecutor Islami to SPRK.

In this meeting was also foreseen the approval of determining the positions for promotion and transfer of prosecutors to prosecution offices but such thing did not happened. This agenda item was removed without any explanation.

All decisions adopted in KPC were voted unanimously, except for the decision on the reviewing of applications for Chief Prosecutor of SPRK and Appellate Prosecution, where one member abstained.

Even during this meeting, in almost all items on the agenda, only two members of KPC participate in discussion, Mr. Blerim Isufaj and Mr. Bahri Hyseni. No other member of KPC does not participate in debate or discussion, but all unanimously voted for the adoption of all decisions.

Most of the decisions adopted by the KPC, are published within six or seven days after their adoption.

- **KPC on June 15, 2016, has held the seventh meeting for 2016 or its 116th meeting.** At this meeting, KPC has discussed five points from the agenda of the day, which included the Report of National Coordinator on Combating Economic Crimes during October - December 2015 and January-March 2016, the first request on the Budget of Prosecutorial Council for 2017, approval of positions for promotion and transfer of prosecutors to prosecution offices, the amendment and supplement of the Supervisory

Committee in fighting corruption and economic crimes, including the seizure and confiscation of illegal assets, and point of the agenda where the prosecutor Mr. Arben Ismaili, was appointed by KPC members from the rank of Prosecutorial Council as the contact person where should be addressed the potential threats that may be directed to prosecutors.

Also in this meeting of KPC, there's lack of debate and discussion regarding the agenda items. The only members of KPC who have participated in discussions are Mr. Blerim Isufaj with over 11 minutes, Mr. Bahri Hyseni with over 9 minutes, Mr. Aleksandër Lumezi with over 23 minutes, Mr. Idain Smajjili after approximately six months participated in discussion with 1 min and 14 seconds. No other member of KPC does not discuss at this meeting.

Also characteristic for this meeting is the delays and in other cases non-publishing of KPC decisions that were adopted at this meeting. KPC did not publish at all the decision regarding the request for the prosecutorial system budget for 2016 and the decision regarding the positions for transfer and promotion of prosecutors.

4. Recommendations

RECOMMENDATIONS FOR KJC AND KPC:

- Judicial and Prosecutorial Council during the process of drafting policies regarding the implementation of the package of laws for KJC and KPC to cooperate and coordinate activities in the processes related to the appointment, re-appointment, transfer, promotion of judges and prosecutors, as well as the processes related to the appointment of members of KJC, KPC and the relevant committees of both Councils. KJC and KPC to apply unique practices and standards and harmonized related to the abovementioned issues always taking into account the specifics and scope which develop both Councils.

RECOMMENDATIONS FOR KJC:

- KJC before the adoption of regulations and internal acts of KJC to plan and assess the eventual risk before the decision making process, so that the so far practice of amending and supplementing the rules and procedures associated with important processes in the judicial system.
- KJC to fulfill legal obligations arising from the basic laws on the judicial system, including the adoption of secondary legislation.

- KLI recommends to KJC that upon the issuance of bylaws, is enough to refer only to legal basis and only in those cases when a such authority was passed by law and not necessarily has to refer to Constitutional provisions.
- KLI recommends to KJC to fulfill legal obligations and to invite Court Presidents to report to the KJC regarding the administration and management of the respective courts.
- KLI recommends to KJC to undertake the necessary actions necessary in establishing of new branches of courts in Kosovo Polje for the municipality of Kosovo Polje and Municipality of Obilic, branch in Junik for the Municipality of Junik; branch in Shtime for the Municipality of Shtime, as defined by the law.
- KLI recommends to KJC members to play an active role in the meetings of the Council during the policy making and decision making process in Council.
- KLI recommends to KJC to use the current mechanisms to play a proactive role in the monitoring and supervision of the committees of the Council, the Secretariat and the Performance Assessment Unit.
- KLI recommends to KJC that during the adoption of the report on the courts work for 2016, to take into account the issues, such as:
 - What were the challenges of the system during the reporting year and how were they treated by the Council?
 - To define the factors and indicators that had an impact (positive / negative) on the work of the Council during 2015.
 - What were the limitations (eg. the budget) and what was their effect on work of the Council?
 - How did they overcome the obstacles and what is intended in the future in order for them to not be repeated?
 - What were the main results and achievements?
- KLI recommends to KJC to prepare a work plan which should have clear objectives regarding the judges performance assessment. KJC should set a deadline of three or four years to assess the performance of all judges in Kosovo.

RECOMMENDATIONS FOR KPC:

- KLI recommends to KPC to review the Regulation on Transfer and Promotion of State Prosecutors, respectively its Article 9:
- KLI recommends to KPC cancellation of the Regulation on Institutional Cooperation.

- KLI recommends to KPC to implement in practice the Regulation on Communication with the Public.
- KLI recommends to KPC the publication of the Strategic Plan (2016-2018) and Action Plan for Increasing the Effectiveness of the Prosecutorial System in the fight against Corruption and Economic Crimes, including Seizure and Confiscation of Illegal Assets. Even a year after the adoption of this plan by KPC on December 1, 2015, the same has not been published.
- KLI recommends to KPC to review the work reports of the State Prosecutor for 2015 and 2016.
- KLI recommends to the Secretariat KPC to draft, respectively KPC approve the work reports of the Council for 2015 and 2016.
- KLI recommends to KPC to fulfill the legal obligations regarding the prosecutors performance assessment.
- KLI recommends to the Director of the Secretariat to fulfill the legal obligations towards KPC;
- KLI recommends to KPC to start the recruitment process of the Director of Prosecutors Performance Assessment Unit.
- KLI recommends to KPC and the Office of the State Prosecutor to approve the working plan of State Prosecutor for 2016.
- KLI recommends to KPC to report to the public on the implementation of its objectives set out in a specific manner and based on measurable indicators every six (6) months.
- KLI recommends to KPC to invite Chief Prosecutors to report regarding the administration and management of the respective courts.
- KLI recommends to KPC members to exercise their powers and responsibilities in accordance with the law, making sure to return the legality and legitimacy to the Council;
- KLI recommends to KPC to assess and cancel all illegal decisions adopted in the Council.
- KLI recommends to KPC members that during the exercise of their functions to have an active role through their participation in discussion and debate during the process of policy making and decision making in KPC.